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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,070	03/16/2004	Albert S. Wang	MS1-801USC4	5175
22801	7590	07/14/2005	EXAMINER	
LEE & HAYES PLLC 421 W RIVERSIDE AVENUE SUITE 500 SPOKANE, WA 99201			DIEP, NHON THANH	
			ART UNIT	PAPER NUMBER
			2613	

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/803,070

Applicant(s)

WANG, ALBERT S.

Examiner

Nhon T. Diep

Art Unit

2613

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 17-20, 33-36 and 49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 17-20, 33-36 and 49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-4, 17-20, 33-36 and 49 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,118,817. Although the conflicting claims are not identical, they are not patentably distinct from each other because the invention being claimed is a broader recitation of the same invention being claimed in the above US Patent. Therefore, the

application claims are encompassed by the above patent. A terminal disclaimer is required so as to insure that, were the application to mature into a patent, both patents would be commonly owned in their lifetimes.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over demanded bit rate of the transmission environment and also the quality of encoded pictures (US 5,978,544) as cited by the applicant.

Shimada et al discloses a video compression coding apparatus and video compression recording/playback apparatus comprising the same method for encoding a motion video signal, the method comprising: determining a desired size for a first frame of the motion video signal (fig. 5, step S12); encoding the first frame of the motion video signal to form an encoded frame (fig. 5, step S11); determining an encoded size of the encoded frame; comparing the encoded size to the desired size (fig. 5, step S13); adjusting an encoding parameter such that encoding the first frame according to the encoding parameter as adjusted would form a different encoded frame having a size closer to the desired size than the encoded size is to the desired size (fig. 5, steps S14-S15-S16); and encoding a second frame of the motion video signal according to the encoding parameter as adjusted (fig. 5, step S17) as specified in claim1; wherein the

second frame is subsequent to the first frame in the motion video signal (Next Frame, step S17) as specified in claim 2; wherein the encoding parameter is a numerical representation of a compromise between consumed bandwidth and image quality of the motion video signal as encoded (steps S15-S16 read in light of fig. 11 which shows the quality vs bitrate) as specified in claim 3; wherein the step of adjusting comprises: determining a difference between the encoded size and the desired size; and adjusting the encoding parameter by an amount which is proportional to the difference (steps S15-S16) as specified in claim 4. It is noted that Shimada et al does not particularly disclose that the adjusted encoding parameter compensates for no more than about 50% of any difference between the encoded size and the desired size. Since adjusting coding parameter to satisfy the demanded bit rate of the transmission environment and also the quality of encoded pictures is well known to an ordinary skilled in the pertinent art and therefore, it would have been obvious to one of ordinary skilled in the art at the time the invention was made to find adjusting coding parameters to satisfy both the demanded bit rate of the transmission environment and the quality of encoded pictures. And further more, since there is no criticality disclosed with regard to the threshold of 50% of the difference between the encoded bit size and the desired bit size, it is believed that Shimada et al at least in some instances, would have met the claimed limitation in order to meet the demands of bit rate and quality.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 2613

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 17-20, 33-36 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimada et al, in view of Kumazawa et al (US 5,815,217).

As applied to claims 1-4 above, it is noted that the combination of Shimada et al does not particularly disclose the using of computer and software to process the method as claimed in claims 17-20, 33-36 and 49. Kumazawa et al teaches the detection and processing of motion video signal can be realized with software processing using a CPU 17 of general use as shown in the block diagram shown in FIG. 4. In other words, a moving image encoder 18 composed of the frame memory 1, the subtracter 2, quantizer 4, entropy encoder 5, adder 7, etc. is connected to a bus 19 of the CPU 17, and the prediction error between frames which is necessary for the scene-change detection can be read from the CPU 17. The CPU 17 realizes an operator, a counter and a comparator, that is, a scene-change detection mechanism, following a program stored in a memory 20. Therefore, it would have been obvious to one of ordinary skilled in the art at the time the invention was made to modify the system of Shimada et al by using computer and software to process the coding of video signals as taught by Kumazawa et al. Doing so would help to expedite the process.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nhon T. Diep whose telephone number is 571-272-7328. The examiner can normally be reached on m-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mehrdad Dastouri can be reached on 571-272-7418. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ND  
7/11/2005

  
**NHON DIEP**  
**PRIMARY EXAMINER**